

## **Appendix H – Development of the Contract**

## Development of Contract Language

### 1. General

These instructions are provided to explain how the State's Model Contract may be modified to develop a mutually agreeable final contract. It is imperative that Bidders follow these instructions carefully in order to be fully responsive contractually to the requirements of the ITP.

Any Bidder that does not intend to submit proposed contract language changes, should send a statement to that effect by the date specified for submittal of proposed contract language in the Key Action Dates to the Department Official listed in Section 1.4.

### 2. Instructions to Prepare Proposed Contract Language Changes

- A. Annotate the Draft Contract, as appropriate, at the place of the proposed change. Margins can be utilized with an arrow drawn to the point of insertion. Do not retype the contract, and **DO NOT INCLUDE ANY DOLLAR FIGURES.**
- B. Prepare a cover letter of transmittal that identifies each proposed change to be made to the Draft Contract and that explains (except where the reason for the change is obvious) the rationale for the change.
- C. Make a copy of the annotated Draft Contract and retain for your files. This copy will be used during subsequent communications with the State relative to the acceptability of the proposed changes to the Draft Contract.
- D. Submit the cover letter and the annotated Draft Contract to the State no later than the date indicated in the ITP's schedule of Key Action Dates.
- E. Proposed contract language changes not submitted in the manner identified above may not be considered and may be returned without review.
- F. The State will consider as accepted any contract provisions that are not addressed in the Bidder's proposed changes. The Bidder will not have the opportunity to open additional issues for negotiation at a later date.

### 3. Confidential Discussion

During the Draft Proposal confidential discussion, the State will discuss several key issues raised by the Bidder. The Bidder will reconsider its proposed contract language changes in light of the confidential discussions and the Bidder's understanding of the contract and the work to be performed, and shall resubmit the State's Model Contract with annotated changes with the Final Proposal.

#### 4. Contract Negotiation

The process for reviewing and negotiating the Final Contract with the Apparently Successful Bidder shall be as follows:

- A. During the Draft Proposal Confidential Discussions, the State shall provide the Bidder an overview of the top priority contract issues and a basic understanding of the State's position.
- B. If there are any contract issues raised by Bidders which the State wishes to adopt, or change its position on, an ITP addenda will be issued prior to the Final Proposal due date.
- C. Bidders shall submit Final proposal including cost based on the Model Contract language, the ITP requirements, and the Bidder's solution. The Bidder's contract response in the Final Proposal will be used for discussion during the Contract Negotiation phase of the procurement.
- D. Ground rules for contract negotiation with Apparently Successful Bidder:
  - 1) Scope changes are not permissible
  - 2) Contract Negotiations will take place between the State and the Bidder declared as the Apparently Successful Bidder and will begin on the day established by the Procurement Official. The Apparently Successful Bidder shall be available to begin face-to-face contract negotiations promptly on the day established by the Procurement Official.
  - 3) The Contract Negotiations will be held in Sacramento at a site designated by the State.
  - 4) All Contract Negotiations shall take place in the presence of, and with the full knowledge of, the entire State contract negotiation team. It is anticipated that all discussion will be face-to-face with the Bidder, but at the discretion of the Procurement Official, negotiation may also be conducted on conference calls.
  - 5) The Contract Negotiations shall be based solely on the ITP, the State's Model Contract, and the proposed changes submitted by the Bidder in the Final Proposal.
  - 6) The Contract Negotiations period will conclude no later than 5:00 pm, twelve (12) weeks from the first day of the Contract Negotiations period. The State may end the negotiations at an earlier date if, in the State's sole opinion, it is unlikely that an acceptable Final Contract can be reached. If this occurs, the State shall cancel selection of the Apparently Successful Bidder and commence the contract negotiation

process with the next “best-value” bidder. The State may extend the Contract Negotiations period beyond the twelve (12) week timeframe at its sole discretion. At the conclusion of the Contract Negotiation period, the State will submit a Final Contract to the Apparently Successful Bidder for signature.

- 7) The Apparently Successful Bidder shall present a signed Final Contract to the Procurement Official within five (5) State business days of its delivery or identify any negotiated issues that the State has incorrectly presented in the contract language.
- 8) The Apparently Successful Bidder shall present a signed Final Contract with five (5) State business days following delivery of the resubmitted, if any, Final Contract. If the Apparently Successful Bidder then refuses to sign the resubmitted Final Contract within five (5) State business days of delivery, the State shall cancel selection of the Apparently Successful Bidder and commence the contract negotiation process with the next “best-value” bidder.